

in-kind services from a program specified in §§ 273.2(j)(2)(i)(B), 273.2(j)(2)(i)(C), 273.2(j)(2)(ii)(A), or 273.2(j)(2)(ii)(B), the State agency must determine whether the individual or the household benefits from the assistance provided, in accordance with § 273.2(j)(2)(iii). Individuals entitled to Medicaid benefits only are not considered recipients of SSI or PA.

(18) The State agency must develop clear and uniform standards for identifying kinds of resources that, as a practical matter, the household is unable to sell for any significant return because the household's interest is relatively slight or the costs of selling the household's interest would be relatively great. The State agency must so identify a resource if its sale or other disposition is unlikely to produce any significant amount of funds for the support of the household or the cost of selling the resource would be relatively great. This provision does not apply to financial instruments such as stocks, bonds, and negotiable financial instruments. The determination of whether any part of the value of a vehicle is included as a resource must be made in accordance with the provisions of paragraphs (e)(3) and (f) of this section. The State agency may require verification of the value of a resource to be excluded if the information provided by the household is questionable. The State agencies must use the following definitions in developing these standards:

(i) "Significant return" means any return, after estimating costs of sale or disposition, and taking into account the ownership interest of the household, that the State agency determines are more than \$1,500; and

(ii) "Any significant amount of funds" means funds amounting to more than \$1,500.  
(f) \* \* \*

(2) Only the following vehicles are exempt from the equity value test outlined in paragraph (f)(1)(iii) of this section:

(i) Vehicles excluded under paragraph (e)(3)(i) of this section;

(ii) One licensed vehicle per adult household member (or an ineligible alien or disqualified household member whose resources are being considered available to household), regardless of the use of the vehicle; and

(iii) Any other vehicle a household member under age 18 (or an ineligible alien or disqualified household member under age 18 whose resources are being considered available to household) drives to commute to and from employment, or to and from training or education which is preparatory to employment, or to seek employment. This equity exclusion applies during temporary periods of unemployment to a vehicle which a household member under age 18 customarily drives to commute to and from employment.

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#### § 273.9 Income and deductions.

(a) *Income eligibility standards.* Participation in the Program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. Households which contain an elderly or disabled member shall meet the net income eligibility standards for the Food Stamp Program. Households which do not contain an elderly or disabled member shall meet both the net income eligibility standards and the gross income eligibility standards for the Food Stamp Program. Households which are categorically eligible as defined in § 273.2(j)(2) or 273.2(j)(4) do not have to meet either the gross or net income eligibility standards. The net and gross income eligibility standards shall be based on the Federal income poverty levels established as provided in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

(1) The gross income eligibility standards for the Food Stamp Program shall be as follows:

(i) The income eligibility standards for the 48 contiguous States and the District of Columbia, Guam and the Virgin Islands shall be 130 percent of the Federal income poverty levels for the 48 contiguous States and the District of Columbia.

(ii) The income eligibility standards for Alaska shall be 130 percent of the Federal income poverty levels for Alaska.

(iii) The income eligibility standards for Hawaii shall be 130 percent of the Federal income poverty levels for Hawaii.

(2) The net income eligibility standards for the Food Stamp Program shall be as follows:

(i) The income eligibility standards for the 48 contiguous States and the District of Columbia, Guam and the Virgin Islands shall be the Federal income poverty levels for the 48 contiguous States and the District of Columbia.

(ii) The income eligibility standards for Alaska shall be the Federal income poverty levels for Alaska.

(iii) The income eligibility standard for Hawaii shall be the Federal income poverty levels for Hawaii.

(3) The income eligibility limits, as described in this paragraph, are revised each October 1 to reflect the annual adjustment to the Federal income poverty guidelines for the 48 States and the District of Columbia, for Alaska, and for Hawaii.

(i) 130 percent of the annual income poverty guidelines shall be divided by 12 to determine the monthly gross income standards, rounding the results upwards as necessary. For households greater than eight persons, the increment in the Federal income poverty guidelines is multiplied by 130 percent, divided by 12, and the results rounded upward if necessary.

(ii) The annual income poverty guidelines shall be divided by 12 to determine the monthly net income eligibility standards, rounding the results upward as necessary. For households greater than eight persons, the increment in the Federal income poverty guidelines is divided by 12, and the results rounded upward if necessary.

(4) The monthly gross and net income eligibility standards for all areas will be prescribed in tables posted on the FNS web site, at [www.fns.usda.gov/fsp](http://www.fns.usda.gov/fsp).

(b) *Definition of income.* Household income shall mean all income from whatever source excluding only items specified in paragraph (c) of this section.

(1) Earned income shall include: (i) All wages and salaries of an employee.

(ii) The gross income from a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the costs of doing business as provided in paragraph (c) of this section. Ownership of rental property shall be considered a self-employment enterprise; however, income derived from the rental property shall be considered earned income only if a member of the household is actively engaged in the management of the property at least an average of 20 hours a week. Payments from a roomer or boarder, except foster care boarders, shall also be considered self-employment income.

(iii) Training allowances from vocational and rehabilitative programs recognized by Federal, State, or local governments, such as the work incentive program, to the extent they are not a

reimbursement. Training allowances under Job Training Partnership Act, other than earnings as specified in paragraph (b)(1)(v) of this section, are excluded from consideration as income.

(iv) Payments under Title I (VISTA, University Year for Action, etc.) of the Domestic Volunteer Service Act of 1973 (Pub. L. 93-113 Stat., as amended) shall be considered earned income and subject to the earned income deduction prescribed in § 273.10(e)(1)(i)(B), excluding payments made to those households specified in paragraph (c)(10)(iii) of this section.

(v) Earnings to individuals who are participating in on-the-job training programs under section 204(5), title II, of the Job Training Partnership Act. This provision does not apply to household members under 19 years of age who are under the parental control of another adult member, regardless of school attendance and/or enrollment as discussed in paragraph (c)(7) of this section. For the purpose of this provision, earnings include monies paid by the Job Training Partnership Act and monies paid by the employer.

(vi) Educational assistance which has a work requirement (such as work study, an assistantship or fellowship with a work requirement) in excess of the amount excluded under § 273.9(c)(3).

(2) Unearned income shall include, but not be limited to:

(i) Assistance payments from Federal or federally aided public assistance programs, such as supplemental security income (SSI) or Temporary Assistance for Needy Families (TANF); general assistance (GA) programs (as defined in § 271.2); or other assistance programs based on need. Such assistance is considered to be unearned income even if provided in the form of a vendor payment (provided to a third party on behalf of the household), unless the vendor payment is specifically exempt from consideration as countable income under the provisions of paragraph (c)(1) of this section. Assistance payments from programs which require, as a condition of eligibility, the actual performance of work without compensation other than the assistance payments themselves, shall be considered unearned income.

## Food and Nutrition Service, USDA

## § 273.9

(ii) Annuities; pensions; retirement, veteran's, or disability benefits; worker's or unemployment compensation including any amounts deducted to repay claims for intentional program violations as provided in § 272.12; old-age, survivors, or social security benefits; strike benefits; foster care payments for children or adults who are considered members of the household; gross income minus the cost of doing business derived from rental property in which a household member is not actively engaged in the management of the property at least 20 hours a week.

(iii) Support or alimony payments made directly to the household from nonhousehold members.

(iv) Scholarships, educational grants, deferred payment loans for education, veteran's educational benefits and the like, other than educational assistance with a work requirement, in excess of amounts excluded under § 273.9(c).

(v) Payments from Government-sponsored programs, dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or benefit.

(vi) Monies which are withdrawn or dividends which are or could be received by a household from trust funds considered to be excludable resources under § 273.8(e)(8). Such trust withdrawals shall be considered income in the month received, unless otherwise exempt under the provisions of paragraph (c) of this section. Dividends which the household has the option of either receiving as income or reinvesting in the trust are to be considered as income in the month they become available to the household unless otherwise exempt under the provisions of paragraph (c) of this section.

(3) The earned or unearned income of an individual disqualified from the household for intentional Program violation, in accordance with § 273.16, or as a result of a sanction imposed while he/she was participating in a household disqualified for failure to comply with workfare requirements, in accordance with § 273.22, shall continue to be attributed in their entirety to the remaining household members. However, the earned or unearned income of individuals disqualified from households for failing to comply with the require-

ment to provide an SSN, in accordance with § 273.6, or for being an ineligible alien, in accordance with § 273.4, shall continue to be counted as income, less a pro rata share for the individual. Procedures for calculating this pro rata share are described in § 273.11(c).

(4) For households containing sponsored aliens (as defined in § 273.11(j)(1)), unearned income shall also include that amount of the monthly income of an alien's sponsor and the sponsor's spouse (if living with the sponsor) that has been deemed to be that of the alien as unearned income in accordance with the procedures established in § 273.11(j), unless the sponsored alien is otherwise exempt from this provision in accordance with § 273.11(j). Actual money paid to the alien by the sponsor or the sponsor's spouse would not be considered income to the alien unless the amount paid exceeds the amount attributed. The amount paid that actually exceeds the amount attributed would be considered income to the alien in addition to the amount attributed to the alien.

(5) Income shall not include the following:

(i) Moneys withheld from an assistance payment, earned income, or other income source, or moneys received from any income source which are voluntarily or involuntarily returned, to repay a prior overpayment received from that income source, provided that the overpayment was not excludable under paragraph (c) of this section. However, moneys withheld from assistance from another program, as specified in § 273.11(k), shall be included as income.

(ii) Child support payments received by TANF recipients which must be transferred to the agency administering title IV-D of the Social Security Act, as amended, to maintain TANF eligibility.

(c) *Income exclusions.* Only the following items shall be excluded from household income and no other income shall be excluded:

(1) Any gain or benefit which is not in the form of money payable directly to the household, including in-kind benefits and certain vendor payments. In-kind benefits are those for which no monetary payment is made on behalf of

the household and include meals, clothing, housing, or produce from a garden. A vendor payment is a money payment made on behalf of a household by a person or organization outside of the household directly to either the household's creditors or to a person or organization providing a service to the household. Payments made to a third party on behalf of the household are included or excluded as income as follows:

(i) *Public assistance (PA) vendor payments.* PA vendor payments are counted as income unless they are made for:

(A) Medical assistance;

(B) Child care assistance;

(C) Energy assistance as defined in paragraph (c)(11) of this section;

(D) Emergency assistance (including, but not limited to housing and transportation payments) for migrant or seasonal farmworker households while they are in the job stream;

(E) Housing assistance payments for households living in transitional housing for the homeless;

(F) Housing assistance payments made through a State or local housing authority;

(G) Emergency and special assistance. PA provided to a third party on behalf of a household which is not specifically excluded from consideration as income under the provisions of paragraphs (c)(1)(i)(A) through (c)(1)(i)(E) of this section shall be considered for exclusion under this provision. To be considered emergency or special assistance and excluded under this provision, the assistance must be provided over and above the normal PA grant or payment, or cannot normally be provided as part of such grant or payment. If the PA program is composed of various standards or components, the assistance would be considered over and above the normal grant or not part of the grant if the assistance is not included as a regular component of the PA grant or benefit or the amount of assistance exceeds the maximum rate of payment for the relevant component. If the PA program is not composed of various standards or components but is designed to provide a basic monthly grant or payment for all eligible households and provides a larger basic grant amount for all households

in a particular category, e.g., all households with infants, the larger amount is still part of the normal grant or benefit for such households and not an "extra" payment excluded under this provision. On the other hand, if a fire destroyed a household item and a PA program provides an emergency amount paid directly to a store to purchase a replacement, such a payment is excluded under this provision. If the PA program is not composed of various standards, allowances, or components but is simply designed to provide assistance on an as-needed basis rather than to provide routine, regular monthly benefits to a client, no exclusion would be granted under this provision because the assistance is not provided over and above the normal grant, it is the normal grant. If it is not clear whether a certain type of PA vendor payment is covered under this provision, the State agency shall apply to the appropriate FNS Regional Office for a determination of whether the PA vendor payments should be excluded. The application for this exclusion determination must explain the emergency or special nature of the vendor payment, the exact type of assistance it is intended to provide, who is eligible for the assistance, how the assistance is paid, and how the vendor payment fits into the overall PA benefit standard. A copy of the rules, ordinances, or statutes which create and authorize the program shall accompany the application request.

(ii) *General assistance (GA) vendor payments.* Vendor payments made under a State or local GA program or a comparable basic assistance program are excluded from income except for some vendor payments for housing. A housing vendor payment is counted as income unless the payment is for:

(A) Assistance provided for utility costs;

(B) Energy assistance (as defined in paragraph (c)(11) of this section);

(C) Housing assistance from a State or local housing authority;

(D) Emergency assistance for migrant or seasonal farmworker households while they are in the job stream;

(E) Housing assistance for households living in transitional housing for the homeless;

## Food and Nutrition Service, USDA

## § 273.9

(F) Emergency or special payments (as defined in paragraph (c)(1)(i)(F) of this section; or

(G) Assistance provided under a program in a State in which no GA payments may be made directly to the household in the form of cash.

(iii) *Department of Housing and Urban Development (HUD) vendor payments.* Rent or mortgage payments made to landlords or mortgagees by HUD are excluded.

(iv) *Educational assistance vendor payments.* Educational assistance provided to a third party on behalf of the household for living expenses shall be treated the same as educational assistance payable directly to the household.

(v) *Vendor payments that are reimbursements.* Reimbursements made in the form of vendor payments are excluded on the same basis as reimbursements paid directly to the household in accordance with paragraph (c)(5) of this section.

(vi) *Demonstration project vendor payments.* In-kind or vendor payments which would normally be excluded as income but are converted in whole or in part to a direct cash payment under a federally authorized demonstration project or waiver of provisions of Federal law shall be excluded from income.

(vii) *Other third-party payments.* Other third-party payments shall be handled as follows: moneys legally obligated and otherwise payable to the household which are diverted by the provider of the payment to a third party for a household expense shall be counted as income and not excluded. If a person or organization makes a payment to a third party on behalf of a household using funds that are not owed to the household, the payment shall be excluded from income. This distinction is illustrated by the following examples:

(A) A friend or relative uses his or her own money to pay the household's rent directly to the landlord. This vendor payment shall be excluded.

(B) A household member earns wages. However, the wages are garnished or diverted by the employer and paid to a third party for a household expense, such as rent. This vendor payment is counted as income. However, if the employer pays a household's rent directly to the landlord in addition to paying

the household its regular wages, the rent payment shall be excluded from income. Similarly, if the employer provides housing to an employee in addition to wages, the value of the housing shall not be counted as income.

(C) A household receives court-ordered monthly support payments in the amount of \$400. Later, \$200 is diverted by the provider and paid directly to a creditor for a household expense. The payment is counted as income. Money deducted or diverted from a court-ordered support or alimony payment (or other binding written support or alimony agreement) to a third party for a household's expense shall be included as income because the payment is taken from money that is owed to the household. However, payments specified by a court order or other legally binding agreement to go directly to a third party rather than the household are excluded from income because they are not otherwise payable to the household. For example, a court awards support payments in the amount of \$400 a month and in addition orders \$200 to be paid directly to a bank for repayment of a loan. The \$400 payment is counted as income and the \$200 payment is excluded from income. Support payments not required by a court order or other legally binding agreement (including payments in excess of the amount specified in a court order or written agreement) which are paid to a third party on the household's behalf shall be excluded from income.

(2) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of \$30 in a quarter.

(3)(i) Educational assistance, including grants, scholarships, fellowships, work study, educational loans on which payment is deferred, veterans' educational benefits and the like.

(ii) To be excluded, educational assistance referred to in paragraph (c)(3)(i) must be:

(A) Awarded to a household member enrolled at a:

(1) Recognized institution of post-secondary education (meaning any public or private educational institution which normally requires a high school diploma or equivalency certificate for

## § 273.9

## 7 CFR Ch. II (1-1-01 Edition)

enrollment or admits persons who are beyond the age of compulsory school attendance in the State in which the institution is located, provided that the institution is legally authorized or recognized by the State to provide an educational program beyond secondary education in the State or provides a program of training to prepare students for gainful employment, including correspondence schools at that level),

(2) School for the handicapped,

(3) Vocational education program,

(4) Vocational or technical school,

(5) Program that provides for obtaining a secondary school diploma or the equivalent;

(B) Used for or identified (earmarked) by the institution, school, program, or other grantor for the following allowable expenses:

(1) Tuition,

(2) Mandatory school fees, including the rental or purchase of any equipment, material, and supplies related to the pursuit of the course of study involved,

(3) Books,

(4) Supplies,

(5) Transportation,

(6) Miscellaneous personal expenses, other than normal living expenses, of the student incidental to attending a school, institution or program,

(7) Dependent care,

(8) Origination fees and insurance premiums on educational loans,

(9) Normal living expenses which are room and board are not excludable.

(10) Amounts excluded for dependent care costs shall not also be excluded under the general exclusion provisions of paragraph § 273.9(c)(5)(i)(C). Dependent care costs which exceed the amount excludable from income shall be deducted from income in accordance with paragraph § 273.9(d)(4) and be subject to a cap.

(iii) Exclusions based on use pursuant to paragraph (c)(3)(ii)(B) must be incurred or anticipated for the period the educational income is intended to cover regardless of when the educational income is actually received. If a student uses other income sources to pay for allowable educational expenses in months before the educational income is received, the exclusions to

cover the expenses shall be allowed when the educational income is received. When the amounts used for allowable expense are more than amounts earmarked by the institution, school, program or other grantor, an exclusion shall be allowed for amounts used over the earmarked amounts. Exclusions based on use shall be subtracted from unearned educational income to the extent possible. If the unearned educational income is not enough to cover the expense, the remainder of the allowable expense shall be excluded from earned educational income.

(iv) An individual's total educational income exclusions granted under the provisions of paragraph (c)(3)(i) through (c)(3)(iii) of this section cannot exceed that individual's total educational income which was subject to the provisions of paragraph (c)(3)(i) through (c)(3)(iii) of this section.

(4) All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred. Educational loans on which repayment is deferred shall be excluded pursuant to the provisions of § 273.9(c)(3)(i). A loan on which repayment must begin within 60 days after receipt of the loan shall not be considered a deferred repayment loan.

(5) Reimbursements for past or future expenses, to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household. Reimbursements for normal household living expenses such as rent or mortgage, personal clothing, or food eaten at home are a gain or benefit and, therefore, are not excluded. To be excluded, these payments must be provided specifically for an identified expense, other than normal living expenses, and used for the purpose intended. When a reimbursement, including a flat allowance, covers multiple expenses, each expense does not have to be separately identified as long as none of the reimbursement covers normal living expenses. The amount by which a reimbursement exceeds the actual incurred expense shall be counted as income. However, reimbursements shall not be considered to exceed actual expenses, unless the provider or

## Food and Nutrition Service, USDA

## § 273.9

the household indicates the amount is excessive.

(i) Examples of excludable reimbursements which are not considered to be a gain or benefit to the household are:

(A) Reimbursements or flat allowances, including reimbursements made to the household under § 273.7(d)(1)(ii), for job- or training-related expenses such as travel, per diem, uniforms, and transportation to and from the job or training site. Reimbursements which are provided over and above the basic wages for these expenses are excluded; however, these expenses, if not reimbursed, are not otherwise deductible. Reimbursements for the travel expenses incurred by migrant workers are also excluded.

(B) Reimbursements for out-of-pocket expenses of volunteers incurred in the course of their work.

(C) Medical or dependent care reimbursements.

(D) Reimbursements received by households to pay for services provided by Title XX of the Social Security Act.

(E) Any allowance a State agency provides no more frequently than annually for children's clothes when the children enter or return to school or daycare, provided the State agency does not reduce the monthly TANF payment for the month in which the school clothes allowance is provided. State agencies are not required to verify attendance at school or daycare.

(F) Reimbursements made to the household under § 273.7(d)(1)(ii) for expenses necessary for participation in an education component under the E&T program.

(ii) The following shall not be considered a reimbursement excludable under this provision:

(A) No portion of benefits provided under title IV-A of the Social Security Act, to the extent such benefits are attributed to an adjustment for work-related or child care expenses (except for payments or reimbursements for such expenses made under an employment, education or training program initiated under such title after September 19, 1988), shall be considered excludable under this provision.

(B) No portion of any educational assistance that is provided for normal living expenses (room and board) shall

be considered a reimbursement excludable under this provision.

(6) Moneys received and used for the care and maintenance of a third-party beneficiary who is not a household member. If the intended beneficiaries of a single payment are both household and nonhousehold members, any identifiable portion of the payment intended and used for the care and maintenance of the nonhousehold member shall be excluded. If the nonhousehold member's portion cannot be readily identified, the payment shall be evenly prorated among intended beneficiaries and the exclusion applied to the nonhousehold member's pro rata share or the amount actually used for the nonhousehold member's care and maintenance, whichever is less.

(7) The earned income (as defined in paragraph (b)(1) of this section) of any household member who is under age 22, who is an elementary or secondary school student, and who lives with a natural, adoptive, or stepparent or under the parental control of a household member other than a parent. For purposes of this provision, an elementary or secondary school student is someone who attends elementary or secondary school, or who attends classes to obtain a General Equivalency Diploma that are recognized, operated, or supervised by the student's state or local school district, or who attends elementary or secondary classes through a home-school program recognized or supervised by the student's state or local school district. The exclusion shall continue to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment will resume following the break. If the child's earnings or amount of work performed cannot be differentiated from that of other household members, the total earnings shall be prorated equally among the working members and the child's pro rata share excluded.

(8) Money received in the form of a nonrecurring lump-sum payment, including, but not limited to, income tax refunds, rebates, or credits; retroactive lump-sum social security, SSI, public

assistance, railroad retirement benefits, or other payments; lump-sum insurance settlements; or refunds of security deposits on rental property or utilities. These payments shall be counted as resources in the month received, in accordance with § 273.8(c) unless specifically excluded from consideration as a resource by other Federal laws.

(9) The cost of producing self-employment income. The procedures for computing the cost of producing self-employment income are described in § 273.11.

(10) Any income that is specifically excluded by any other Federal statute from consideration as income for the purpose of determining eligibility for the food stamp program. The following laws provide such an exclusion:

(i) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Pub. L. 91-646, section 216).

(ii) Payments received under the Alaska Native Claims Settlement Act (Pub. L. 92-203, section 21(a));

(iii) Any payment to volunteers under Title II (RSVP, Foster Grandparents and others) of the Domestic Volunteer Services Act of 1973 (Pub. L. 93-113) as amended. Payments under title I of that Act (including payments from such title I programs as VISTA, University Year for Action, and Urban Crime Prevention Program) to volunteers shall be excluded for those individuals receiving food stamps or public assistance at the time they joined the title I program, except that households which were receiving an income exclusion for a Vista or other title I Subsistence allowance at the time of conversion to the Food Stamp Act of 1977 shall continue to receive an income exclusion for VISTA for the length of their volunteer contract in effect at the time of conversion. Temporary interruptions in food stamp participation shall not alter the exclusion once an initial determination has been made. New applicants who were not receiving public assistance or food stamps at the time they joined VISTA shall have these volunteer payments included as earned income. The FNS National Office shall keep FNS Regional Offices informed of any new pro-

grams created under title I and II or changes in programs mentioned above so that they may alert State agencies.

(iv) Income derived from certain sub-marginal land of the United States which is held in trust for certain Indian tribes (Pub. L. 94-114, section 6).

(v) Allowances, earnings, or payments (including reimbursements) to individuals participating in programs under the Job Training Partnership Act (Pub. L. 90-300), except as provided for under paragraph (b)(1)(v) of this section.

(vi) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540).

(vii) Earned income tax credits received as a result of Pub. L. 95-600, the Revenue Act of 1978 which are received before January 1, 1980.

(viii) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation (Pub. L. 95-433).

(ix) Payments to the Passamaquoddy Tribe and the Penobscot Nation or any of their members received pursuant to the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96-420, section 5).

(x) Payments of relocation assistance to members of the Navajo and Hopi Tribes under Pub. L. 93-531.

(11) Payments or allowances made for the purpose of providing energy assistance under any Federal law, including utility reimbursements made by the Department of Housing and Urban Development and the Farmers Home Administration. In addition, any payments or allowances, including tax credits, under State or local law which are so designated and made for the purpose of providing energy assistance shall be excluded from consideration as income, provided that FNS has approved the exclusion of such payments or allowances. Notification of FNS approval will contain a specific date on which it becomes effective, but in no case will that date be later than 30 days following FNS notification to the State agency. The payments shall include but not be limited to assistance which is combined in a single payment with public assistance (PA) or general assistance (GA). The State agency shall submit documentation to FNS to



## Food and Nutrition Service, USDA

## § 273.9

show that the State or local energy assistance to be excluded meets the purpose designation as follows:

(i) The State or local payments or allowances are made for the purpose of providing energy assistance to households. Some indicators of purpose are:

(A) The energy assistance is not limited to households which receive PA or GA;

(B) The energy assistance is provided only to households which actually incur home energy costs;

(C) If the energy assistance payments are made separately or combined with other assistance payments, such as PA or GA, the energy assistance results in an increase in total assistance to the household (not counting food stamps) when compared to the assistance level as of the first day of the State or local legislative session during which the energy assistance is authorized or increased;

(D) The energy assistance is based on studies, surveys, or reports evaluating home energy costs. The energy assistance levels should be directly tied to the findings of such studies, surveys, or reports; and

(E) The energy assistance payments are designated as such by the legislative body enacting them;

(ii) The payments or allowances are clearly designated, (A) in State or local law, or (B) in documentation supporting or accompanying the statute, as energy assistance, distinct from other assistance. If the designation is contained only in supporting documentation it must clearly reflect the intent of both chambers of a bicameral legislature or the intent of a majority of members of a town council or county board. Documentation that would show a majority intent of an enacting body could take the form of a legislative resolution, the preamble and body of county regulations, county or town ordinances, or similar measures that represent the wishes of an entire legislative body; and

(iii) The levels of State or local energy assistance payments or allowances are calculated based on the seasonal home energy needs of typical households over an aggregate period not exceeding six months per year. If the State or local energy assistance is

actually provided over a period longer than this aggregate, then the State agency shall document the reasons why it is administratively infeasible or impracticable to provide the energy assistance within the aggregate period on which it is based. If the legislation enacting the energy assistance program requires calculation of the energy assistance payments on the basis of only *increased* seasonal home energy needs, such payments may be excluded.

(12) Cash donations based on need received on or after February 1, 1988 from one or more private nonprofit charitable organizations, but not to exceed \$300 in a Federal fiscal year quarter.

(13) Earned income tax credit payments received either as a lump sum or payments under section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income tax credits received as part of the paycheck or as a reduction in taxes that otherwise would have been paid at the end of the year).

(14) Any payment made to an E&T participant under § 273.7(d)(1)(ii) for costs that are reasonably necessary and directly related to participation in the E&T program. These costs include, but are not limited to, dependent care costs, transportation, other expenses related to work, training or education, such as uniforms, personal safety items or other necessary equipment, and books or training manuals. These costs shall not include the cost of meals away from home. Also, the value of any dependent care services provided for or arranged under § 273.7(d)(1)(ii)(A) would be excluded.

(15) Governmental foster care payments received by households with foster care individuals who are considered to be boarders in accordance with § 273.1(c).

(16) Income of an SSI recipient necessary for the fulfillment of a plan for achieving self-support (PASS) which has been approved under section 1612(b)(4)(A)(iii) or 1612(b)(4)(B)(iv) of the Social Security Act. This income may be spent in accordance with an approved PASS or deposited into a PASS savings account for future use.

(d) *Income deductions.* Deductions shall be allowed only for the following household expenses:

(1) *Standard deduction.* Effective October 1, 1996, for each household in the 48 contiguous States and the District of Columbia, Alaska, Hawaii, Guam and the Virgin Islands of the United States, the standard deduction must be \$134, \$229, \$189, \$269, and \$118, respectively.

(2) *Earned income deduction.* Twenty percent of gross earned income as defined in paragraph (b)(1) of this section. Earnings excluded in paragraph (c) of this section shall not be included in gross earned income for purposes of computing the earned income deduction.

(3) *Excess medical deduction.* That portion of medical expenses in excess of \$35 per month, excluding special diets, incurred by any household member who is elderly or disabled as defined in § 271.2. Spouses or other persons receiving benefits as a dependent of the SSI or disability and blindness recipient are not eligible to receive this deduction but persons receiving emergency SSI benefits based on presumptive eligibility are eligible for this deduction. Allowable medical costs are:

(i) Medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner authorized by State law or other qualified health professional.

(ii) Hospitalization or outpatient treatment, nursing care, and nursing home care including payments by the household for an individual who was a household member immediately prior to entering a hospital or nursing home provided by a facility recognized by the State.

(iii) Prescription drugs when prescribed by a licensed practitioner authorized under State law and other over-the-counter medication (including insulin) when approved by a licensed practitioner or other qualified health professional; in addition, costs of medical supplies, sick-room equipment (including rental) or other prescribed equipment are deductible;

(iv) Health and hospitalization insurance policy premiums. The costs of health and accident policies such as those payable in lump sum settlements for death or dismemberment or income maintenance policies such as those that continue mortgage or loan pay-

ments while the beneficiary is disabled are not deductible;

(v) Medicare premiums related to coverage under Title XVIII of the Social Security Act; any cost-sharing or spend down expenses incurred by Medicaid recipients;

(vi) Dentures, hearing aids, and prosthetics;

(vii) Securing and maintaining a seeing eye or hearing dog including the cost of dog food and veterinarian bills;

(viii) Eye glasses prescribed by a physician skilled in eye disease or by an optometrist;

(ix) Reasonable cost of transportation and lodging to obtain medical treatment or services;

(x) Maintaining an attendant, homemaker, home health aide, or child care services, housekeeper, necessary due to age, infirmity, or illness. In addition, an amount equal to the one person coupon allotment shall be deducted if the household furnishes the majority of the attendant's meals. The allotment for this meal related deduction shall be that in effect at the time of initial certification. The State agency is only required to update the allotment amount at the next scheduled recertification; however, at their option, the State agency may do so earlier. If a household incurs attendant care costs that could qualify under both the medical deduction and dependent care deduction, the State agency shall treat the cost as a medical expense.

(4) *Dependent care.* Payments for the actual costs for the care of children or other dependents when necessary for a household member to accept or continue employment, comply with the employment and training requirements as specified under § 273.7(f), or attend training or pursue education which is preparatory to employment, except as provided in § 273.10(d)(1)(i). The maximum monthly dependent care deduction amount households shall be granted under this provision is \$200 a month for each dependent child under two (2) years of age and \$175 a month for each other dependent.

(5) *Shelter costs*—(i) *Homeless households.* State agencies shall use a standard estimate of the shelter expenses for households in which all members are homeless and are not receiving free

shelter throughout the month. If State agencies opt to develop their own estimate, the estimate must be consistent with costs incurred by homeless people for shelter and the methodology and database used in developing the State estimate shall be submitted to FNS for approval. If a State agency finds that area shelter costs differ by geographic areas, the State agency may develop specific estimates by geographic areas. If a State agency submits data that show shelter costs for most homeless households are higher than the FNS shelter estimate, the higher shelter estimate shall be used. If State agencies do not wish to develop their own estimate, then the State agency shall use the estimate provided by the Department. The Department's shelter estimate for FY 92 is \$128. The Department will update this figure annually when the shelter cap is adjusted using the same method as is used in indexing the shelter cap. All homeless households which incur or reasonably expect to incur shelter costs during a month shall be eligible for the estimate unless higher shelter costs are verified in accordance with § 273.2(f)(1)(xi) of this chapter at which point, the household may use actual shelter costs rather than the estimate. Homeless households which incur no shelter costs during the month shall *not* be eligible for the standard estimate.

(ii) *Household shelter deduction.* Monthly shelter costs in excess of 50 percent of the household's income after all other deductions in paragraphs (d)(1), (2), (3) and (4) of this section have been allowed. The shelter deduction shall not exceed the maximum limit established for the area. This is applicable unless the household contains a member who is elderly or disabled as defined in § 271.2. Such households shall receive an excess shelter deduction for the monthly cost that exceeds 50 percent of the household's monthly income after all other applicable deductions. The shelter deduction amount applicable for use in the 48 contiguous States and the District of Columbia, and the amounts applicable for use in Alaska, Hawaii, Guam, and the Virgin Islands are adjusted annually and will be prescribed in General Notices published in the FEDERAL REG-

ISTER. Shelter costs shall include only the following:

(A) Continuing charges for the shelter occupied by the household, including rent, mortgage, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments.

(B) Property taxes, State and local assessments, and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings.

(C) The cost of heating and cooking fuel; cooling and electricity; water and sewerage; garbage and trash collection fees; the basic service fee for one telephone, including tax on the basic fee; and fees charged by the utility provider for initial installation of the utility. One-time deposits shall not be included as shelter costs.

(D) The shelter costs for the home if temporarily not occupied by the household because of employment or training away from home, illness, or abandonment caused by a natural disaster or casualty loss. For costs of a home vacated by the household to be included in the household's shelter costs, the household must intend to return to the home; the current occupants of the home, if any, must not be claiming the shelter costs for food stamp purposes; and the home must not be leased or rented during the absence of the household.

(E) Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood. Shelter costs shall not include charges for repair of the home that have been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source.

(6) *Standard utility allowance.* (i) The State agency may elect to offer a standard utility allowance to households for use in calculating shelter costs. The State agency may establish either:

(A) A separate standard utility allowance for individual utility expenses defined in paragraph (d)(5)(ii)(C) of this section;

(B) A single standard utility allowance which includes a heating or cooling component and which is available to all households which incur out-of-pocket heating or cooling expenses; or

(C) Two single standard utility allowances which include a heating or cooling component.

If the State agency chooses to develop two standard utility allowances for households which incur heating or cooling expenses, one standard shall only be used for those households which receive indirect energy assistance payments other than payments under the Low Income Home Energy Assistance Act of 1981, and the second standard shall be used for all other households. A cooling cost is a verifiable utility expense relating to the operation of air conditioning systems or room air conditioners.

(ii) The standard utility allowance which includes a heating or cooling component shall be made available only to households which incur heating and cooling costs separately and apart from their rent or mortgage. These households include:

(A) Residents of rental housing who are billed on a monthly basis by their landlords for actual usage as determined through individual metering;

(B) Recipients of energy assistance payments made under the Low Income Home Energy Assistance Act of 1981; or

(C) Recipients of indirect energy assistance payments, made under a program other than the Low Income Home Energy Assistance Act of 1981, who continue to incur out-of-pocket heating or cooling expenses in accordance with § 273.10(d)(6) during any month covered by the certification period.

To be qualified, the household must be billed on a regular basis for its heating or cooling costs. A household which incurs cooling or heating fuel costs on an irregular basis but is otherwise eligible to use the standard allowance may continue to use the allowance between billing periods. A household which lives in a public housing unit or other rental housing unit which has central utility meters and charges the household only for excess heating or cooling costs shall not be permitted to use the standard utility allowance which includes a heating or cooling cost component. If a

household is not entitled to the standard utility allowance, it may claim the actual utility expenses (for any utility identified in paragraph (d)(5)(ii)(C) of this section) which it does pay separately.

(iii) The State agency may elect to develop either an annualized standard utility allowance or seasonal standard utility allowances. If the State agency elects to use a single annualized standard utility allowance it will not be required to seasonally adjust the budgets of qualified households which incur either heating or cooling costs. If the State agency elects to vary the allowance seasonally it shall ensure that during the heating season the allowance is provided only to households with heating costs, and that during the cooling season the allowance is provided only to households with cooling costs.

(iv) State agencies shall develop methodologies, subject to FNS approval, to be followed in establishing their standard utility allowances. The standard allowance(s) developed by the State agency shall be submitted to FNS for approval.

(v) The State agency may establish standard utility allowances as prescribed in paragraph (d)(6)(i) of this section.

(A) If the State agency establishes separate standard allowances, households which do not qualify for the standard allowance for heating and cooling costs may be allowed to use the other standard allowances.

(B) If the State agency establishes one or two single standard allowances, it shall include the cost of heating and/or cooling, cooking fuel, electricity not used to heat or cool the residence, the basic service fee for one telephone, water, sewerage, and garbage and trash collection. If the State agency elects to develop a single standard for those households which receive indirect energy assistance payments, as provided for in paragraph (d)(6)(i) of this section, the standard shall reflect the average out-of-pocket heating or cooling expense for such households.

(C) The State agency may develop a method, subject to FNS approval, for calculating a mandatory telephone allowance for use in conjunction with a

## Food and Nutrition Service, USDA

## § 273.9

single utility allowance or as the standard allowance for the telephone if the State has separate standard allowances by utility. In States with a single utility allowance, the telephone allowance would apply to households which are not entitled to claim the overall standard, but which, nonetheless, incur separate telephone expenses. The State agency may mandate use of the telephone allowance even if actual telephone costs are higher.

(vi) The State agency shall review and adjust the standard utility allowance(s) annually to reflect changes in the cost of utilities. The State agency may use data gathered through quality control sampling, surveys of utility company rates, or other methods for updating the standard utility allowance(s). The State agency may vary the size of the standard utility allowance to reflect differences such as seasonal cost changes or cost variations between geographical areas.

(vii) At the time of certification the household shall be advised that it may deduct its actual utility costs rather than the standard allowances (except as provided in paragraph (d)(6)(v)(C) of this section for a telephone standard) throughout the certification period if the household can verify these costs. The State agency shall further advise the household when it has the right to switch between the use of actual utility costs and the standard utility allowance. The State agency shall permit the household to switch between actual utility costs and the standard utility allowance at the time of recertification and one additional time during each twelve-month period.

(viii) If the household shares utility expenses with, and lives with, another individual not participating in the Food Stamp Program, another household participating in the Food Stamp Program, or both, the allowance shall be prorated among the household and the other individual, household, or both, *Provided*, That the State agency may, if it is unable to accurately determine the prorata share of utility costs paid by the parties, use the actual utility costs paid by each household. Under no circumstances shall the total amount of utility costs used to determine the amount of the deduction ex-

ceed the total amount of actual utility costs for the residence.

(7) *Child support deduction.* Legally obligated child support payments paid by a household member to or for a nonhousehold member, including payments made to a third party on behalf of the nonhousehold member (vendor payments). The State agency shall allow a deduction for amounts paid toward arrearages. Alimony payments made to or for a nonhousehold member shall not be included in the child support deduction.

(8) *Adjustment of shelter deduction.* In the case of a household that does not contain an elderly or disabled individual, in the 48 contiguous States and the District of Columbia, Alaska, Hawaii, Guam and the Virgin Islands of the United States, the excess shelter expense deduction must not exceed:

(i) For the period beginning August 22, 1996, and ending on December 31, 1996, \$247, \$429, \$353, \$300, and \$182 per month, respectively;

(ii) For the period beginning on January 1, 1997, and ending on September 30, 1998, \$250, \$434, \$357, \$304, and \$184 per month, respectively;

(iii) For the period beginning on October 1, 1998, and ending on September 30, 2000, \$275, \$478, \$393, \$334, and \$203 per month, respectively; and

(iv) For the period beginning on October 1, 2000, and thereafter, \$300, \$521, \$429, \$364, and \$221 per month, respectively.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 273.9, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

EFFECTIVE DATE NOTE: By Amdt. 388, 65 FR 70203, Nov. 21, 2000, in § 273.9, paragraphs (b)(1)(v) and (b)(4) were revised, paragraph (c)(1)(i)(E) was removed and paragraphs (c)(1)(i)(F) and (c)(1)(i)(G) were redesignated as paragraphs (c)(1)(i)(E) and (c)(1)(i)(F), paragraphs (c)(1)(ii)(A) and (c)(1)(ii)(E) were removed and paragraphs (c)(1)(ii)(B), (c)(1)(ii)(C), (c)(1)(ii)(D), (c)(1)(ii)(F) and (c)(1)(ii)(G) were redesignated as paragraphs (c)(1)(ii)(A), (c)(1)(ii)(B), (c)(1)(ii)(C), (c)(1)(ii)(D) and (c)(1)(ii)(E), the first sentence of paragraph (c)(7) was amended by removing the number "22" and adding the number "18", a new sentence was added before the last sentence in paragraph (c)(8),

## § 273.9

paragraph (c)(11) was revised, paragraphs (d)(6) and (d)(8) were removed, paragraph (d)(5) was redesignated as paragraph (d)(6) and paragraph (d)(7) was redesignated as paragraph (d)(5), and new paragraph (d)(6) was revised, effective January 20, 2001. For the convenience of the user, the added and revised text is set forth as follows:

### § 273.9 Income and deductions.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(v) Earnings to individuals who are participating in on-the-job training programs under section 204(b)(1)(C) or section 264(c)(1)(A) of the Workforce Investment Act. This provision does not apply to household members under 19 years of age who are under the parental control of another adult member, regardless of school attendance and/or enrollment as discussed in paragraph (c)(7) of this section. For the purpose of this provision, earnings include monies paid under the Workforce Investment Act and monies paid by the employer.

\* \* \* \* \*

(4) For a household containing a sponsored alien, the income of the sponsor and the sponsor's spouse must be deemed in accordance with § 273.4(c)(2).

\* \* \* \* \*

(c) \* \* \*

(8) \* \* \* TANF payments made to divert a family from becoming dependent on welfare may be excluded as a nonrecurring lump-sum payment if the payment is not defined as assistance because of the exception for non-recurrent, short-term benefits in 45 CFR 261.31(b)(1). \* \* \*

\* \* \* \* \*

(11) Energy assistance as follows:

(i) Any payments or allowances made for the purpose of providing energy assistance under any Federal law other than part A of Title IV of the Social Security Act (42 U.S.C. 601 *et seq.*), including utility reimbursements made by the Department of Housing and Urban Development and the Rural Housing Service, or

(ii) A one-time payment or allowance applied for on an as-needed basis and made under a Federal or State law for the costs of weatherization or emergency repair or replacement of an unsafe or inoperative furnace or other heating or cooling device. A down-payment followed by a final payment upon completion of the work will be consid-

## 7 CFR Ch. II (1-1-01 Edition)

ered a one-time payment for purposes of this provision.

\* \* \* \* \*

(d) \* \* \*

(6) *Standard utility allowance.*

(i) *Homeless shelter deduction.* A State agency may develop a standard homeless shelter deduction up to a maximum of \$143 a month for shelter expenses specified in paragraphs (d)(6)(ii)(A), (d)(6)(ii)(B) and (d)(6)(ii)(C) of this section that may reasonably be expected to be incurred by households in which all members are homeless individuals but are not receiving free shelter throughout the month. The deduction must be subtracted from net income in determining eligibility and allotments for the households. The State agency may make a household with extremely low shelter costs ineligible for the deduction. A household receiving the homeless shelter deduction cannot have its shelter expenses considered under paragraphs (d)(6)(ii) or (d)(6)(iii) of this section. However, a homeless household may choose to claim actual costs under paragraph (d)(6)(ii) of this section instead of the homeless shelter deduction if actual costs are higher and verified.

(ii) *Excess shelter deduction.* Monthly shelter expenses in excess of 50 percent of the household's income after all other deductions in paragraphs (d)(1) through (d)(5) of this section have been allowed. If the household does not contain an elderly or disabled member, as defined in § 271.2 of this chapter, the shelter deduction cannot exceed the maximum shelter deduction limit established for the area. FNS will notify State agencies of the amount of the limit. Only the following expenses are allowable shelter expenses:

(A) Continuing charges for the shelter occupied by the household, including rent, mortgage, condo and association fees, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments.

(B) Property taxes, State and local assessments, and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings.

(C) The cost of fuel for heating; cooling (*i.e.*, the operation of air conditioning systems or room air conditioners); electricity or fuel used for purposes other than heating or cooling; water; sewerage; well installation and maintenance; septic tank system installation and maintenance; garbage and trash collection; all service fees required to provide service for one telephone, including, but not limited to, basic service fees, wire maintenance fees, subscriber line charges, relay center surcharges, 911 fees, and taxes; and